## California Desert Grape Administrative Committee

82-901 Bliss Avenue ◆ Indio, California 92201

November 28, 2005

Docket Clerk
Marketing Order Administration Branch
Fruit and Vegetable Programs
Agricultural Marketing Service
U.S. Department of Agriculture
1400 Independence Avenue, S. W.
Washington, D. C. 20250



Dear Sir/Madam:

Re: <u>Proposed Change in Regulatory</u>
<u>Periods for Table Grapes, Coachella Valley</u>
Docket No. FV03-925-1PR
Federal Register Notices of May 25, 2005, p. 30001;
July 25, 2005, p. 42513; and September 27, 2005, p. 56378

Please accept the following comments on behalf of the California Desert Grape Administrative Committee regarding the proposed rule amending Marketing Order No. 925 (7 CFR Parts 925 and 944) and the table grape import regulation 4 (7 CFR 944.503) to prohibit, pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, the importation of non-exempt table grapes between April 1 and July 10 of this and succeeding years unless such grapes meet minimum grade, size, quality and maturity standards.

The Committee also notes the proposed rule clarifies the maturity requirements for the Flame Seedless variety grape.

## Support of the Proposed Rule

Section 925.52(a)(2) of the marketing order for table grapes grown in a designated area of Southeastern California (i.e., Coachella Valley) requires inspection of table grapes to meet certain grade, size, quality, maturity, packing and container requirements described in the marketing order for the period April 20 through August 15 of each year. These requirements also apply to imported table grapes under Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The California Desert Grape Administrative Committee overwhelmingly supports the proposed rule for a change in the effective date period because this will assure inspection of imports of table grapes from the southern hemisphere that are in the U.S. marketplace at the same time as inspected domestic and Mexican grapes. The proposed rule is not designed to limit imports but it will ensure that future imports will not contravene the intent of the table grape marketing order.

The Committee also supports changing the August 15 date of the marketing order period to July 10 since a zero to de minimus amount of the desert table grape harvesting and marketing takes place after July 10. Thus, the Committee sees no benefit in continuing the effective date beyond this time. (No Chilean table grapes are affected by this change as most Chilean shipments end by early to mid-May).

The Committee notes that Coachella table grapes and any grapes imported into California are also covered by a year-round state grade and quality standard (The California Code of Regulations, Title 3, Subchapter 4, Fresh Fruits, Nuts and Vegetables, Article 25, Table Grapes and Raisins). (Attachment A).

The proposed rule also provides clarification of the maturity requirements of the Flame seedless grape. It provides an additional option (if the juice meets or exceeds 16.5 % soluble solids) in the federal marketing order and the import regulation for testing the minimum maturity of the Flame seedless grape. The Committee supports this clarification and notes that this option is already included in the California table grape standard.

#### **Summary**

Chile and Mexico are the largest exporting table grape countries to the U.S. Over the last few years, Chile has held about 75% of the import market while Mexico has held around 20%. While Chile's table grape exports generally begin in December, grapes from Mexico mirror closely the Coachella Valley harvesting and marketing period, which can fall as early as the end of April (depending on weather) or the first or second week of May.

These remarks will respond to the following questions:

- -- Are there imported uninspected table grapes in the U.S. domestic market at any time from April 20 to August 15, the current effective date of the table grape marketing order?
- -- Did the imported table grapes circumvent section 8e requirements?
- -- Finally, if the effective date is changed, what will be the effect on price and availability of table grapes in the U.S. market?

There is a substantial amount of non-exempt imported table grapes entering the U.S. prior to the beginning of the current effective date (April 20). These uninspected grapes are in commerce in the U.S. market <u>after</u> April 20 in competition with USDA inspected table grapes from the Coachella Valley (and from Mexico) that have met the required standards of the marketing order. Thus, the uninspected imported table grapes are circumventing the grade, size, quality and maturity standards of the marketing order. Almost all of these imported grapes are from Chile.

As stated in the proposed rule, less than half of 1% of non-exempt Chilean table grape imports to the U.S. enter during the effective date period set out in the import regulation. Based on the 2005 shipping season, if mandatory inspection had been effective on April 1 as proposed in this rule, this percentage would have increased to approximately 18.67% of the total annual non-exempt table grape shipments from Chile. (Attachment B) Further evidence indicates that many of these non-exempt grapes will be in the domestic market in April, May, and sometimes in June at the time other inspected grapes from the Coachella Valley and Mexico are in the market. If the proposed rule goes into effect, then during this critical period all non-exempt Chilean grapes entering the U.S. also will have been inspected and passed for grade, size, quality and maturity standards. This ensures that (1) the consumer always has access to quality table grapes, and (2) that the quality of the Chilean imports do not negatively impact the prices of those grapes from the Coachella Valley and Mexico which are entering the domestic market in late April or early May.

In general, most Chilean table grapes enter the U.S. through the port of Philadelphia. Some of these grapes receive voluntary inspection (requested by the importer or broker when the grapes are suspect), and a review of table grapes inspected at that port for the last six years indicates that failure rates from grapes being voluntarily inspected in early April through April 19 have ranged from 42% to 87%.

The proposed rule will have very little effect on the availability of imported Chilean table grapes during the additional period the inspection requirement would be in effect. Weekly and monthly marketing estimates indicate sufficient Chilean supplies in the market during March and April. While the higher quality grape would bring a better price for the importer, the cost to the consumer would be minimal because retail stores will not be required to impose a higher cost on the consumer to make up for lost or reduced retail sales as a result of discarded grapes.

## Table Grape Imports Prior to Effective Date Period

As stated previously, Chile and Mexico export the largest amount of table grapes to the U.S.<sup>1</sup>

Over the last six years, less than 1% of Chilean non-exempt table grapes entered the U.S. during the April 20-August 15 effective date period, the period of mandatory inspection. (Attachment C).

As stated previously, most of the table grapes, and the largest shipments, exported to the U.S. enter prior to April 20, the beginning effective date of the requirement for mandatory inspection for grade, size, quality and maturity. (The largest shipments of the year arrive in March). Historically, imports have dropped significantly the week of April 20, and in most years, virtually no non-exempt shipments entered during the week mandatory inspections were in effect.

This occurs for two reasons: the Chilean season for Thompson seedless, the largest table grape variety exported to the United States, is coming to a close (having been exported from Chile from December through mid-April), and a push is made to get as many grapes as possible to this country prior to the onset of the required inspections.

These imported table grapes circumvent the import regulation because the grapes enter prior to the effective date of April 20 and are stored and the uninspected grapes are released into the domestic market at the time when grapes from the Coachella Valley and Mexico are being inspected and released into the market. The uninspected lower quality Chilean grapes thwart the purposes of the Act, and the poor quality of the grapes dampen the enthusiasm of consumers at the beginning of the Coachella marketing season when prices for domestic grapes should provide growers with a fair return. The quality of the imported Chilean grapes do not comply with the marketing order requirements for grade, size and maturity and the lower prices they bring seriously curtail the profits of domestic producers.

## Results of Inspections Just Prior to Effective Date Period

Prior to the effective date of the marketing order, table grape imports which enter the U.S. may be voluntarily inspected. A volunteer inspection is requested if the shipment or

<sup>&</sup>lt;sup>1</sup>Five percent is imported from Argentina, South Africa and a few other countries.

portion thereof is defective (crushed, shattered, decayed, scarred, undersized, etc.) or if the quality does not meet the specifications of the importer/buyer.

For the years 2000 through 2005, data on the number of boxes of non-exempt table grapes from Chile that entered the port of Philadelphia (the major east coast port for Chilean grape arrivals) from April 1 through April 19 averaged 4,990,905. Of this amount, approximately one quarter received voluntary inspections (It is presumed the non-inspected grapes were of good quality). In other words, approximately 3.7 million boxes from this port alone are in U.S. commerce without having any inspection whatsoever. Legal title to these grapes generally remains with the Chilean exporter until the product is sold to the U.S. retail food stores.

Please note, however, Attachment D which is a power point presentation that appears to have been made by Mr. David A. Holzworth, Lepon Holzworth & Kato, PLLC, Washington, D.C., counsel to ASOEX. The presentation was reported to have been made in the autumn of 2005 in Philadelphia, Pennsylvania, to the Chilean grape importing and allied industries. The presentation implies that up to 20 billion cases will be denied entry into the U.S. because of inspection. This appears to be an admission that 20 billion boxes (We presume Mr. Holtzworth meant to say 20 million boxes which is still a gross exaggeration) will fail minimum grade, the essence of this rule making proceeding. A close examination of Chilean imports discloses that in the last five years the total amount of nonexempt grapes imported after March 31 was a low of 3,353,359 boxes (2001) and a high of 6,330,042 boxes (2005).

Data on voluntary inspections<sup>2</sup> of Chilean table grapes requested at the port of Philadelphia during the period April 1-April 19 indicates very clearly problems with the quality of many imported grapes. It is important to note that these inspections take place only because importers (and brokers) see problems with the berries that would impact their price or even the possibility of being sold at any price.

Attachment E provides information on shipments of Chilean table grapes at the Philadelphia port during specific periods for the last six years and the results of voluntary inspections. A sample review of these data on non-exempt grapes<sup>3</sup> receiving voluntary inspection indicate the following:

<sup>&</sup>lt;sup>2</sup>Source: Fresh Products Branch, Agricultural Marketing Service, U.S. Department of Agriculture

<sup>&</sup>lt;sup>3</sup>Ibid. Grapes exempt from the grade, size, quality and maturity standard are: Emperor; Calmeria; Almeria; Ribier; Italia Pirovano (Blanca Italia); Christmas Rose; Muscatel; Barlinka; Dauphine; Kyojo; Waltham Cross; Alhonse Lavallee; Bien Donne; Bonnoir (Bonheur); La Rochelle; Queen; Rouge; Sonita; Emperatriz; and Red Globe. These varieties were excluded from the information provided.

Date	18-lb Boxes Inspected (thousands)	Passed	Failed	% Failing
April 2, 2003	55	9	46	83.64%
April 10, 2003	239	128	111	46.44%
April 18, 2003	129	61	68	52.71%
April 2, 2004	78	54	24	30.77%
April 10, 2004	1	.1	0	0.00%
April 19, 2004	152	82	70	46.05%
April 2, 2005	67	18	49	73.13%
April 11, 2005	102	32	70	68.63%
April 19, 2005	7	7	0	0.00%

An examination of the boxes of table grapes inspected in March and April (prior to the effective date) reveals that in 2000, 85% of the grapes failed inspection; in 2001, 75% failed inspection; in 2002, 68% failed inspection; in 2003, 60 % failed inspection; in 2004 61% failed inspection; and in 2005, 64% failed inspection.

Over the last six years (2000 through 2005), these requested voluntary inspections represented a little over one quarter of the shipments of table grapes arriving from the beginning of April through April 19. The fact that 64 % of the 2005 inspected grapes failed indicates a major problem which impacts adversely on domestic producers whose product is just coming on the market.

It should be noted, however, that lots with problem grapes can be resorted following the voluntary inspection. We do not know how many lower quality grapes importers decide to sell in the market at any price. However, as stated in the proposed regulation, if during the marketing order period grapes cannot meet the marketing order requirements they are destroyed, re-exported, or used in processed products.

Attachment E does indicate that at the port of Philadelphia on April 19, 2005, there were 658,000 boxes of table grapes imported from Chile. If we assume that the voluntary inspections that day were made only on these grapes, we find that there were no failure rates. We do not know, of course, if the Chileans expected the ship to arrive on April 20

and therefore shipped only grapes that would meet the quality requirements or if the quality this year is generally better than in previous years. However, this does indicate that when required to do so Chile can meet U.S. table grape quality standards.

Similar data are provided in Attachment F from Chilean Customs.

# Storage of Uninspected Table Grapes Prior to Effective Date and Evidence in U.S. Market after Effective Date

Between the time the Chilean table grapes are imported to the time they are in the retail food store, they are in commerce at port terminals, importer/wholesaler warehouses, or retail distribution centers for periods ranging from one day to several weeks. This time in commerce does not improve the quality of the grapes (bad grapes entering storage will not improve during the storage), and when the storage is accounted for, the table grapes on the retail store shelf may not resemble at all the condition or quality of the product at the U.S. port or when it was reworked before going into the marketplace. While we do not have specifics on how long the imported grapes are in commerce, we understand the economic principle of supply and demand and understand decisions are made daily on when to sell and when to hold the product, and we do know that there are table grapes in the market place without ever having received an official inspection for grade and quality.

Chilean exporters acknowledge the storage of grapes. A public document<sup>4</sup> submitted before the U.S. International Trade Commission states that "However, if Chilean grapes still remain in cold storage for sale after mid-May..., the price premium disappears as new crops from Coachella and Mexico begin arriving because...buyers will always pay higher prices for the "new" grapes...Prices for Chilean table grapes declined after the first two weeks of May, but were associated with commercially insignificant volumes. Clearly, the availability of "new" grapes from Coachella, Arizona, and Mexico, in substantial volumes, made Chilean "old" grapes (which would have been in cold storage for at least 5 weeks since few are entered after April 20), less attractive to retail buyers."

Evidence that uninspected imported table grapes are in U.S. commerce in the U.S. after the effective date period is verified through data of the Agricultural Marketing Service Market News Service reports, the California Table Grape Commission Market Activity Reports, EXIMFRUIT and through various newspaper articles. (Attachment G).

As mentioned earlier, the Thompson seedless variety is Chile's largest table grape variety exported to the U.S. Exports of this variety begin in December and generally conclude in

<sup>&</sup>lt;sup>4</sup>Statement of Akin, Gump, Strauss, Hauer & Feld, LLR, on behalf of the Asociacion de Exportadores de Chile re Inv. Nos. 731-TA-926 and 927, May 16, 2001, p. 13.

mid- to late April. In fact, shipments of all Chilean table grape imports drop precipitously after April 19, the day before the effective date goes into effect. Yet, there is still an abundance of non-exempt imported grapes being marketed in April and May and in some years into June. A review of the dates of Chilean table grape shipments provides verification of this fact.

Data on shipment dates of non-exempt Chilean table grapes show that generally less than one-half of 1% of the non-exempt grapes enter after the marketing order goes into effect. The entire consumption of the Chilean non-exempt grapes does not take place prior to the current effective date of April 20. U.S. importers, brokers, wholesale distributors and others in the chain of commerce follow good business practices, and insofar as they can with a perishable commodity, move these grapes based on current price and supply and demand.

The proposed rule refers to a 1987 SURRES study<sup>5</sup> that discusses the fact table grapes can be stored for a number of months. The study noted that "importers or handlers of imported grapes have used their storage capability extensively in the March-April time frame and that in fact storage periods in the 30-60 day range are not at all uncommon at this time of year." The study goes on to note that the mean average table grapes were stored was 29.6 days but that they could be stored as long as 135 days. 52% of the responders to the SURRES questionnaire said they extended storage for market purposes.

When the comment period was open for the proposed change in the effective date of the table grape marketing order in 1987, one commenter<sup>6</sup> said the following: "Table grapes, under ideal conditions, can be stored, depending on varieties, for a period of 6 to 12 weeks (ideal conditions are 32 degrees F. With 90 percent humidity)."

According to the University of California Department of Agriculture and Natural Resources<sup>7</sup> table grapes can be stored for 1-6 months.

EXIMFRUIT is a reporting service in Philadelphia, Pennsylvania, that publishes an annual report on shipments of Chilean table grapes to the U.S. and the condition and prices of the imported grapes during certain periods. According to EXIMFRUIT (Season 1999/2000 North America Sales Analysis), at the beginning of April 2000, there were three categories

<sup>&</sup>lt;sup>5</sup>SURRES, and Dr. Robert Krapfel, College of Business and Management, University of Maryland, College Park, Maryland, January 26, 1987

<sup>&</sup>lt;sup>6</sup>January 16, 1987 letter from Roger Lavoie, Operations Manager, Hillcrest Sales, Inc., Bala Cynwyd, Pennsylvania, to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA.

<sup>&</sup>lt;sup>7</sup>Commercial Cooling of Fruits, Vegetables, and Flowers, University of California, Agricultural and Natural Resources Publication 21567, 2002.

of Chilean grapes: those that were in good condition and good quality; those which in total were not serious but which notably affected their capacity to be stored; and those with evident condition defects. Only the first group had acceptable movement - "The rest were kept in cold storage awaiting an opportunity to place them..." The report goes on to note that on the west coast the situation in cold storage became critical because "There was simply too much grape (sic) and already there was no control on its (Thompson) sale. The chambers were full of Thompson...and other grapes..."

According to the Chairman of the Chilean Exporters Association<sup>8</sup> "...we had extraordinarily good growing condition except for rains that occurred in February of last year (2000). These rains delayed our harvest and affected the condition of our grapes. This resulted in more of Chile's exports going to the U.S. much later in the season."

In <u>June</u> of 2000, an article<sup>9</sup> in The Packer, a newspaper that follows issues impacting on the U.S. fresh fruit and vegetable industry, noted that prices for produce coming out of Coachella in early June were lower than last season but that markets had been influenced early by extra Chilean product <u>still on the market</u> (emphasis added)..."

In <u>July</u> of 2000, a further article<sup>10</sup> in The Packer noted that by the time Coachella table grapes came into production, "there were <u>still 10 million boxes of Chilean grapes in storage</u> (emphasis added) which caused a supply glut and lower prices early on."

The 2001/2002 EXIMFRUIT report states that "Cold stores full, terminal markets cornered, and condition problems for Thompson seedless remained evident when the first week of April commenced. In this period 700 thousand cases of this variety arrived at U.S. ports..."

The report goes on to note that in the week between April 15 and April 21 thirteen ships arrived at the two coasts of North America with 4.1 million cases of fruit (3.5 million cases of table grapes). "The quantity available became gigantic, forcing storage in distant cold stores, even in the ports, and once again repackaging." It was noted that "In the last week of April the prices of the Thompson were in the very wide range of one to 20 dollars and rather uncertain reports of sales at 32 dollars per case."

<sup>&</sup>lt;sup>8</sup>Ronald Bown, Chairman of the Chilean Exporters Association, at USITC staff conference regarding Inv. Nos. 731-TA-926 and 927, April 20, 2001.

<sup>&</sup>lt;sup>9</sup>The Packer, June 12, 2000, Statement attributed to Tony Fazio, President of Fazio Marketing, Inc., Fresno, California.

<sup>&</sup>lt;sup>10</sup>The Packer, July 3, 2000, Statement attributed to Randy Parnagian of Fowler Marketing International, LLC, Fresno, California.

In the 2002/2003 EXIMFRUIT report, during the week prior to the effective date, it was noted that many of the Thompsons that "were reserved for storage" showed isolated decaying and some had deposits of botrytis. The report goes on to say that there were "no precise numbers...available regarding the volume of Thompson available in the North American market... the stocks of this grape were more than the market needed."

In <u>March</u> of this year, an article<sup>11</sup> in The Packer on the subject of market conditions for table grapes noted that "It all depends on Chile. Sometimes they send their overproduction into storage in the Atlantic ports. If they have a good supply, markets will be down."

In <u>April</u> of this year, an article<sup>12</sup> in The Packer noted storage of Chilean grapes and "what is a state secret is how much they have in storage-in Chile and in the U.S."

Additional evidence that many of the imported grapes are stored for marketing in May and June (Attachment H) is provided from information provided in the California Table Grape Commission Market Activity Reports. As stated previously, during this time period, all U.S. and Mexican table grapes in the retail market have received this mandatory inspection, but the Chilean grapes have not.

The following is a prime example as to storage and the resulting circumvention of the inspection requirements in the marketing order. On April 17, 2004, shipments totaling 279,000 eighteen-pound boxes of Chilean Thompson seedless table grapes entered the U.S. On April 28, after the marketing order had gone into effect, only 2,100 eighteen-pound boxes of Thompson seedless arrived. Yet on June 1, Chilean Thompson seedless grapes were still in the domestic market - "extra-large ordinary condition to poor condition selling as low as \$1."

The Agricultural Marketing Service's own Market News Service provides further evidence that non-exempt Chilean table grapes are in the domestic market place in May and June. (Attachment I).

Finally, on May 4, 2005, the Washington Post's advertisement for the Safeway food

<sup>&</sup>lt;sup>11</sup>The Packer, March 21, 2005, Statement attributed to Francisco Obregon, Director and General Manager of IPR, Solutions, LLC.

<sup>&</sup>lt;sup>12</sup>The Packer, April 25, 2005, Statement attributed to John Pandol, Mexican Operations Chief for Pandol Bros., Inc., Delano, California.

<sup>&</sup>lt;sup>13</sup>Inglobal Full Cargo Report 2003/2004 Season.

<sup>&</sup>lt;sup>14</sup>AMS Market News Report, State Wholesale Fruit and Vegetable Reports 2004, AMS Fruit and Vegetable Programs, Market News Branch, USDA.

retailer advertised the availability of red seedless grapes from Chile. (Attachment J). The grapes are advertised at \$1.29 per pound for a savings of \$1.70 per pound. This indicates a sufficient supply because in general retailers do not put items on sale when there is a scarce supply of the product.

#### Impact of Low-quality Table Grapes in Domestic Market

In its 1999/2000 report, EXIMFRUIT<sup>15</sup> reported that one of the most important reasons for such a difficult season in the U.S. market was because of the *quality* of the table grapes. The report noted that Chile had exported to world markets over 10.6 million cases above the previous year's level and of that increase 81% went to the U.S. Imports to Europe had not varied from the previous year while in the U.S. they had increased by 25%. "The increase started in the middle of March, with fruit affected by rainfall...with delays in harvesting..."

The quality of fruit, whether imported or domestic, has an obvious impact on other fruit which is being marketed at the same time. Several studies to this effect were noted in the proposed rule. The Committee wishes to make the following comments on these important studies.

According to the study<sup>16</sup> by Leon Polopolus, PhD. University of Florida, prepared for and published by the Economic Research Service (ERS), U.S. Department of Agriculture, shipments of "immature, overripe, or otherwise undesirable product can adversely affect the market for all producers."

The Polopolus study goes on to discuss the benefits of quality regulations, noting that such regulations are most effective in assuring reliable quality to consumers and in promoting long-run demand. The report also noted that quality standards reduce shrinkage in the marketing channel and improves marketing efficiency.

The ERS report<sup>17</sup> entitled "Federal Marketing Orders for Fruits, Vegetables, Nuts, and Specialty Crops" states the following: "Any resulting loss of consumer goodwill and confidence (because of low quality) weakens demand for the produce. Retailers usually discount the selling price to compensate consumers for the ...uneven quality of the produce."

<sup>&</sup>lt;sup>15</sup>EXIMFRUIT is an annual report on Chilean fruit exports to the U.S. and other countries.

<sup>&</sup>lt;sup>16</sup>Criteria for Evaluating Federal Marketing Orders: Fruits, Vegetables, Nuts, and Specialty Commodities, Leo Polopolus, Economic Research Service, U.S. Department of Agriculture, December 1986, p. 37 and p. 39.

<sup>&</sup>lt;sup>17</sup>Federal Marketing Orders for Fruits, Vegetables, Nuts, and Specialty Crops, by Nicholas J. Powers, ERS Agricultural Economic Report Number 629, Economic Research Service, U.S. Department of Agriculture, March 1990, p. 22.

As noted in the proposed rule, the ERS report<sup>18</sup> on marketing orders by Steven A. Neff and Gerald E. Plato discusses the rationale for quality standards in the following way: "The basic rationale for quality standards is very simple: only satisfied customers are repeat customers...Thus, quality standards help ensure that consumers are presented a product that is of a consistent quality."

The availability of quality table grapes not only provides satisfaction to consumers, but also means less waste at the retail food stores. According to Polopolus:

Consumer dissatisfaction with immature products will adversely affect repeat sales and products left on the shelf will go to garbage. Small, misshapen, off-color, and blemished products are also sorted out by consumers, often ending up in the garbage bin. This shrinkage adversely affects margins and is ultimately reflected in lower prices to producers and *higher prices* (emphasis added) to consumers.

In our reviews of various fruit marketing reports, we have not found any studies indicating poor quality fruit increases sales.

#### EXIMFRUIT Reports on Storage, Quality and Prices of Table Grapes

EXIMFRUIT reports on the monthly imports of Chilean table grapes to the North American market. The yearly EXIMFRUIT<sup>19</sup> reports provide information on the storage situations and detail the condition and prices of the Chilean imports. For example,

#### Marketing Year 1999/2000

In early April (2000), "Values of \$10-24 were expected for Thompsons but were unachievable for 80% of what was in store due to condition defects. EXIMFRUIT reports that in April it was apparent there were three classifications of the Chilean imports: those in "good conditions and good quality," those which had problems which "notably affected their capacity to be stored," and those with "evident condition defects." Only the first group was moved and "The rest were kept in cold storage awaiting an opportunity to place them..." "The importers who, at the beginning of April thought the market conditions would improve, retained some of the best lots of Thompson to be sold at the end of the season at better prices, but they were unsuccessful."

<sup>&</sup>lt;sup>18</sup>Federal Marketing Orders and Federal Research and Promotion Programs; Background for 1995 Farm Legislation, by Steven A. Neff and Gerald E. Plato, Agricultural Economic Report Number 707, Economic Research Service, U.S. Department of Agriculture, May 1995, p. 4.

<sup>&</sup>lt;sup>19</sup> EMIMFRUIT, Season 1999/2000North America Sales Analysis; Season 2000/2001 North America Sales Analysis; Season 2001/2002 North America Sales Analysis; Season 2002/2003 North America Sales analysis.

The report notes that in early April on both the west and east coasts the cold stores were full and that many times the ports and the terminal markets were full to capacity.

The general condition of Chilean table grapes at the end of April is explained as follows: "At this time there was much fruit on consignment for lack of placing it at firm prices and frequently it was known that importers' returns were between \$3-8 per case."

The report also notes that "With cold stores full, Chilean grapes were simply delivered on consignment or were left in cold stores as problems to be solved later. By the end of May, locally-grown Thompson varied between \$9-14 and all buyers only bought fresh fruit." Thus, the condition of the imported grapes impacted negatively the price of the domestic grapes.

#### Marketing Year 2000/2001

When the month of April (2001) ended, "the Thompson situation became somewhat complicated due to condition problems and the fact that no new shipments arrived that week. There were remnants and for these - according to the receivers - 26 and up to 32 dollars was obtained per lot that was very good. The report also notes that almost all the Thompson grapes that were sold "towards the end of the season reached high prices, very different from the previous year when only a few cases reached this type of prices (sic)."

#### Marketing Year 2001/2002

The report notes that in mid-March supermarkets "made their inspectors examine every lot and choose the best" of Thompson grapes. "At that time, the most common price was within the range of 10 and 15 dollars per case."

The report goes on to say that condition problems were evident during the first week of April when 700,000 cases of Thompson grapes arrived, and by the second week some importers began repackaging the grapes. For berries in good condition the prices varied from \$13-20, but these were minimum quantities within the amount offered.

Although Thompson grapes were no longer arriving in large quantities by mid-April, "most of what remained were lots with problems. Furthermore the process of repackaging had been put to one side. As a result, while the good sold itself (the report indicates "the Thompson were in the very wide range of one to 20 dollars..."), the rest had to be liquidated."

By the third week of April 3.5 million Thompsons arrived from Chile forcing many into cold storage "even in the ports and once again repackaging." "The few good lots ranged

up to \$28 per case but there were also those that were sold for only two dollars. In this case were lots prepared for holding in reserve. They were sold off at very low prices due to their condition."

By the first week in May, Thompsons were no longer arriving in large quantities and "most of what remained were lots with problems." Many had to be liquidated.

#### Marketing Year 2002/2003

During the first two weeks of April, most of the Thompsons which arrived were in good condition although "for some this was variable." At the start of the second week over a million boxes of Thompsons arrived, and it was found that a "few batches were suitable for storage" and the "state of the Thompson was worst than that of March."

By the third week of April the condition of the Thompsons became a more significant factor. The grapes reserved for storage showed "isolated decaying and even deposits of botrytis."

Between the 14<sup>th</sup> and 20<sup>th</sup> of April, there were no precise numbers available "regarding the volume of Thompson available in the North American market. Many claimed not to know. Anyway, the stocks of this grape were more than the market needed."

"Prices in the east stood in the range of 8 to 14 dollars per box..."

In the final week of April with the U.S. marketing order in effect, the report says that "imports abruptly halted, though the market still counted on an abundant availability, a situation that was worsened by the presence of batches in poor condition. Prices of this grape wavered between 6 and 16 dollars per box..."

In the second week of May, the report states that "...now there weren't entirely satisfactory Thompsons... the quantity was not abundant... There were also batches of Thompson with lesser defects that were sold between 10 and 14 dollars per box. The rest hadn't been good and the re-packaging system had come to an end."

## Marketing Year 2003/2004

Even though there were no domestic grapes in the domestic market the first week of February 2004, the report notes that "Few importers were happy with the rhythm of sales. The majority had quantities kept in cold storage in order to seek for (sic) better prices."

The report also notes that between the 19<sup>th</sup> and 25<sup>th</sup> of April, Chilean fruit to the U.S. entered in modest quantities "Compared with those of the previous week and, because of

the implementation of the "marketing order"... "Sales of all types were slow. Two factors explained the rhythm: first, prices were elevated because now, none would arrive and, secondly, local strawberries and cherries entered the market...It was said that an appreciable quantity of Crimson and other reasonable and moderate (quanties) (sic) of Red Globe (exempt grape) were being kept in cold storage."

## Availability of Table Grapes if Effective Date is Extended

The change in the effective date of the marketing order and import regulation will not affect the availability of imported Chilean table grapes. As stated in the proposed rule, both the European Union and Canada have quality and grade standards on a <u>year round</u> basis, and there is no shortage of table grapes in these countries. (It should be noted also that there are no exempt grapes (requiring no inspection) as there are in the United States).

It is apparent by the comments already submitted to AMS on the proposed rule that the Chilean table grape industry and U.S. importers are fighting the change in the effective date because Chilean imports will have to be inspected at an earlier date. This is baffling in that we know Europe, with its year round inspection, imports Chilean table grapes as late as the third week in June. If the Chileans can send quality grapes to Europe as late as June, why is there deep concern that they cannot ship quality grapes to the U.S. beginning April 1? This concern is groundless and should be ignored by AMS.

In Europe fresh fruit which does not meet minimum size requirements is not allowed entry. However, if the fruit does not meet other minimum quality and grade requirements it is allowed to be reworked, and any remainder that does not meet the quality and grade standards is dumped or re-exported. This takes place prior to European customs releasing the shipments. Canada also has minimum grade and quality standards. (Attachment K).

During the mandatory inspection period, shipments of Chilean table grapes are inspected (This is the same shipping point inspection that is required for domestic table grapes.) after they are unloaded. If the grapes meet the minimum grade and size requirements for U.S. No. 1 table grade, a certificate to that effect along with other shipment documentation is given to our Customs and Border Inspection personnel for release of the shipment to the importer. However, if the grapes do not meet the minimum size and grade requirements the grapes may be reworked, i.e., removing unfit grapes. Another inspection is then required. As in Europe, any grapes that still do not meet the requirements are dumped, reexported, or allowed to be processed for juice.

If the April 1 effective date is approved, importers, if they wish to avoid inspections, will probably increase table grape imports in March. In this scenario, the release of the grapes would be modulated over March and April based on consumer demand and price as is now the case. Historically, fewer table grapes are exported to the United States in the month of April than in the month of March (averaging 38% less over the last six years). This is

because Chile's harvest season for non-exempt grapes comes to a close at the end of March. Thus, changing the effective date period will not change the fact that Chile has fewer grapes to export in April than in March.

Past experience shows that requiring inspections does not adversely affect the supply of imported product.

In 1986, the year before the effective date of the table grape marketing order was last changed, Chile exported 14.5 million boxes of table grapes to the U.S. in March, April and May. After the effective date was changed, in 1987 imports for the March, April and May time period increased to 15.9 million boxes, an increase of 9% in one year! Chile's exports in 2005 has increased to 24 million boxes, an increase of 166% since 1987.

In other words, Chile's table grape industry proved that it could meet the quality standards of the U.S. and increased exports to the U.S.

Another example of increased exports when mandatory inspection is required is that of Mexico. U.S. imports of Mexican table grapes actually increased after Mexican table grapes became subject to inspection in 1983. Imports averaged 17,100 metric tons (2.1 million 18-lb. lugs) per year in the three years following the initiation of inspections compared to an average 12,800 tons (1.6 million boxes) in the three prior years. Imports continued to increase in subsequent years. In 2004, Mexico exported 11 million boxes, an increase of 523% since the mid 1980s.

Finally, it should be noted that Europe's and Canada's year round required inspection has not resulted in any decrease in table grape shipments by Chile. However, in 2000, when Chile had an over-abundance of table grapes, the country exported 81% of its increase to the United States in lieu of other export destinations, and essentially all of the increase preceded the onset of the U.S. marketing order. It is believed that Chile did this because it had an abundance of low quality table grapes that may not have met the standards of the other countries

Chile has a very sophisticated table grape industry, and if required to do so, the Chilean industry could easily meet U.S. standards of quality just as Mexico has done.

## Prices of Table Grapes if Effective Date is Extended

Currently, orderly marketing is affected because there is a wide range in quality of the table grapes in the market place, as noted in the proposed rule. Table grapes which sell for \$37 or \$40 per lug are grapes exceeding the No. 1 grade standard. These quality grapes are found in each of the years mentioned in this response. However, the lower quality grapes are of a sufficient number to impact the domestic market by lowering consumers' demand and by lowering prices.

With an April 1 effective date, the previous wide range of prices which resulted from inconsistent quality (because imports heretofore have consisted of both high and low quality table grapes) will be narrowed. The prices of quality grapes from Chile will be more in line with quality grapes from Coachella and from Mexico. (However, it must be noted that prices also vary from season to season dependent on weather conditions and the volume of grapes in the market).

It must be noted, however, that pricing of table grapes to the consumer is not fully determined by the importer nor the Chilean exporter, but for the American consumer pricing is determined by the retail stores and supermarkets and there is not a standard for markup.

Obviously, a higher quality grape can be sold at a higher price. For example, data from the Market News Service for a sample period (Attachment L) indicate that better quality grapes would yield almost\$11 per lug in additional revenues, and, as noted earlier, there would be less retail store loss with quality grapes because consumers would not be required to sustain the cost to the stores of discarding unfit product.

Inspection costs would be insignificant. Inspection charges are 2.5 cents per box, which translates to 0.14 cents per pound for grapes packed in 18-pound lugs. In May 2005 the least-expensive Chilean Thompson seedless grapes were selling for about \$10 per box. The 2.5 cent inspection fee is one-quarter of one percent of that price.

The prices to consumers would be negligible, and the consumer would be getting a consistently good quality fruit.

Fresh fruit and the quality of that fruit is extremely important to consumers. According to annual surveys<sup>20</sup> conducted by the Food Marketing Institute, when consumers are asked about their efforts to make their diet healthy the consistent conclusion over the last several years is that "eating more fruits and vegetables is by far the most common means to ensure a healthy diet." Further, when consumers were asked what is important to them in choosing where to shop for groceries, the overwhelming reasons cited as the most important factors were a clean, neat store and high-quality fruits and vegetables.

According to a former Kroger Company spokesperson<sup>21</sup> "The Kroger merchandiser and buyer always wants fresh products in their stores, and he or she is willing to pay more for that quality and size. ... Kroger will pay more for this early and mid-season grape, but, most important, this quality is what sells more grapes."

<sup>&</sup>lt;sup>20</sup>Trends in the United States - Consumer Attitudes & the Supermarket, Food Marketing Institute, 2004.

<sup>&</sup>lt;sup>21</sup>Claude Moldenhauer, former Vice President for Produce and Floral, the Kroger Company, at USITC staff conference regarding Inv. Nos. 731-TA-926 and 927, April 20, 2001.

The table grape marketing order and Import Regulation 4 provide assurance to our consumers of high-quality grapes, and thus any efforts to thwart the purposes of these regulations should be addressed. The Committee believes this can be done through the proposed regulation.

#### An Effective Date Change is WTO consistent

Article III of the GATT which was incorporated into the Uruguay Round Agreement provides that foreign products "shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale..." In other words, so long as standards applicable to imported goods are the same as those applicable to domestic goods and the imposition of such standards does not unnecessarily restrict trade, the obligations of national treatment are fulfilled. The proposed rule, thus, will ensure that <u>all</u> non-exempt table grapes that are in the domestic market during the effective date period will have met the grade standards set forth in the domestic table grape marketing order and Import Regulation 4.

When the effective date was changed in 1987, opponents challenged the change because they thought the regulations applied more stringent requirements to imported grapes, that the imported grapes were unnecessarily subject to regulation when no domestic grapes were on the market, and that these requirements violated the WTO Agreement on Technical Barriers to Trade (TBT). This argument was challenged in court, and in a 1988 Federal District Court Case (Cal-Fruit Suma International, et al. vs. U.S. Department of Agriculture), the court stated that "The Secretary (of Agriculture) applies the threshold standards at the same point in time to both imported and domestic products, just prior to entry into the United States market. Further, the Congressional intent behind §608e-1 – that imports not thwart the goals of the AMAA (Agricultural Marketing Agreement Act)—would not countenance the result sought by plaintiffs, which would allow imported grapes of lesser quality, albeit from the debilitations of travel, into the market to compete with domestic grapes subjected to inspection under higher standards."

With regard to the TBT, the court stated that the AMAA and the TBT were not incompatible. The court noted that in Section 2531 of the TBT reference is made to no standards-related activity of any federal agency being deemed "to constitute an unnecessary obstacle...if the demonstrable purpose of the standards-related activity is to achieve a legitimate domestic objective...and if such activity does not operate to exclude imported products which fully meet the objectives of such activity. By language of exclusion, Section 2531 sanctions those standards-related activities that serve valid domestic objectives and do not operate to exclude imports that meet those objectives. The Marketing Order regulations fully comply with these requirements."

## Effect of the proposed change on the Domestic Industry

An April 1 effective date means that a higher percentage of imported grapes will be inspected and that they, therefore, meet the same requirements that domestic growers are required to meet. This raises the floor on the quality of table grapes thus strengthening the market, satisfying consumers, and providing a good and stable price for both imported grapes and those coming into the marketplace from the domestic industry. Additionally, the higher quality means less waste at the retail level and less rework cost for the retailer, and less waste equates into greater supply for the consumer. The more appealing appearance and better flavor of quality table grapes will lead to increased sales of both imported and domestic product and promote long-run demand.

#### Effect of the proposed change on the Consumer

Changing the effective date should not limit the quantity of table grapes in May or June as discussed thoroughly in Attachment G. The change, however, will provide consumers with a better selection of quality table grapes which, as pointed out previously, is of principal importance to consumers.

The reduced chance of a low-quality table grape in the market means less consumer dissatisfaction, which translates into positive sales for both importers and domestic producers.

#### Effect of the proposed change on Importers and Ports

The advantage of the proposed change to importers is that the range in prices will be narrowed. Because the imported grapes must be inspected, those grapes going into the market will be of higher quality. There will be a very slight increase in cost for inspection, as mentioned previously. However, the increased cost will be de minimus and is unlikely to significantly affect profit margins or be a cause of decreased imports. (Attachment G).

(Importers may claim that the rule change would force an increase in retail prices because having to rework shipments rejected by the inspectors (or more carefully screen shipments before embarkation) would provoke price increases. This argument does not hold up because the cost of reworking grapes at the point of entry, if necessary, should be no more expensive than the retailer's cost of discarding off-grade product.

Since most of the table grapes imported from Chile arrive in the United States through the ports of Wilmington and Philadelphia, the Committee is aware of the fact there may be objection to this rule because it may be viewed as limiting the amount of table grapes that may enter the U.S. marketplace. The Committee believes that this is a vacuous argument.

The Committee has reviewed the impact of the 1987 change in the effective date period. At that time, a number of comments from the Philadelphia area to the USDA expressed concern that the date change would adversely affect the economy of that area. (Attachment M). However, table grape imports to this region indicates that this has not been the case.

Data from the U.S. International Trade Commission indicates that Chilean table grapes account for less than 4% of the tonnage handled in the ports of the Philadelphia Customs District. Grape imports from April through the end of the season account for a fraction of 1% of the District trade volume. (Attachment C).

The question of the impact of inspection has arisen in the past when a change was proposed in the effective date of the table grape marketing order. The Committee wishes to make clear that imported and domestic table grapes receive the same type of inspection just before the grapes are released in commerce - which is referred to as shipping point inspection. It has been noted in the past that our domestic industry has an advantage because our grapes are inspected just after harvest unlike the Chilean grapes which must be in transit for ten days or so from Chile to the United States. The Committee does not look at this issue as an example of unfairness in trade. Unfortunately, every exporter from every country, be it Chile or the United States, has to face certain issues that are beyond our control when exporting to a foreign country. One of those issues is the distance between the two countries and the travel time needed to get the product to the foreign market. For example, the U.S. faces the same issue when we export to Asia.

As explained earlier, the last change in the effective date period (in 1987) had no adverse impact on the importers or the port area of Philadelphia. Chilean table grape imports for the March, April, May period increased 9% that year, and the increase from 1987 to 2005 is over 166%.

Chile has proven that it can meet grade and quality standards in other countries, and there is no reason, therefore, why Chilean imports to the United States cannot also meet comparable quality standards. Obviously, growers in Chile get better prices when they export better quality product, and voluntary inspection costs are consequently reduced.

The Committee believes that Chile for the most part does produce a good quality table grape, but experience has shown that just prior to the April 20 mandatory inspection date, the U.S. receives whatever the country has to offer, and a significant portion of the shipments do not meet the quality standards that must be met by Mexican and Coachella Valley grape growers when grapes from these countries are in the U.S. marketplace.

The U.S. government cannot force Chile to supply quality table grapes to the U.S. It is the Chileans themselves who must make the decision to provide a quality product to the U.S., as they do to Europe.

The Committee believes that American consumers deserve the same quality products that European consumers are receiving. Chile has a sophisticated table grape producing and exporting industry and should not encounter any problems in meeting the requirements of this proposal just as it encountered no problems in 1987.

The Committee is aware that weather conditions and scientific breakthroughs impact the production and harvesting of table grapes in every country, and thus, yields are not the same every year. For example, Chile in 2000 had a bumper table grape crop (and as stated earlier, most of the excess table grapes were exported to the U.S.). This is why the Committee has carefully reviewed at least six years of data on table grape trade just prior to the introduction of the effective date period. We believe that such a time period is necessary in order to show clearly what the trend in shipments and quality has been.

In summary, the Committee believes if there is to be orderly marketing of table grapes for our consumers we must address the current loophole which allows less than the highest quality grapes into our domestic market. Moving the effective date of mandatory inspection of table grapes to April 1 will benefit not only the consumer but also the importer as well as our domestic industry.

Finally, we are sympathetic to the Chilean table grape industry's effort to obtain the information submitted to AMS by our Committee. However, we believe that members of the Chilean table grape industry, and ASOEX in particular, have access to the data. The Chilean industry has access to Chilean Customs, U.S. Bureau of the Census data and all other data upon which the Committee relied. Further, as the exporters of record of the Chilean table grapes in question, the members of ASOEX should have this information in their own business files. It is time now to put a stop to these dilatory tactics and move forward with the rule.

Sincerely,

Mike Bozick

MillE Bouck

Chairman

California Desert Grape Administrative Committee